

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUSTIN GUY, individually on behalf
of himself and others similarly situated,

Plaintiff,

v.

ABSOPURE WATER COMPANY, LLC,
a domestic limited liability company,

Defendant.

Case No.: 20-cv-12734

Hon. Mark A. Goldsmith

**PLAINTIFF’S RESPONSE TO DEFENDANT’S UNTIMELY SUBMITTED
STATEMENT PURSUANT TO THE COURT’S ORDER**

Plaintiff, Justin Guy, hereby Responds to Defendant’s untimely submitted statement to the Court’s Order. *See* ECF No. 134.

Because Defendant failed to present the information set forth in its Statement Pursuant to the Court’s Order in a timely fashion, Plaintiff did not have an opportunity to address Defendant’s Witness List and proposed motions in his initial filing.

With Respect to Defendant’s Statement, first, Defendant’s Witness List suggests that Defendant intends to call **more than thirty-six (36) witnesses** in this straight-forward wage and hour collective action. Plaintiff objects to this absurd request. The Court’s Order Directing Parties to File Joint Statement provides, in

relevant part:

The parties are also on notice that the Court may limit the number of hours each side may have to present their respective cases. See Mich. First Credit Union v. Cumis Ins. Soc. Inc., No. 05-cv-74423, 2009 WL 1664088, at *7 (E.D. Mich. June 15, 2009) (“The Court has broad discretion in establishing reasonable time limits on [a] trial.”)

ECF No. 134. To the extent the Court does not *sua sponte* address Defendant’s proposed Witness List, Plaintiff will file a Motion in Limine to exclude cumulative evidence and for Representative Testimony.¹

Second, Plaintiff objects to Defendant calling witnesses who Defendant failed to timely disclose (*e.g.*, Ron Civone, Andrew Mumford, Bob Sturdy, Joseph Heikkuri).

Third, the Court’s Order Directing Parties to File Joint Statement asks the parties to provide a description of any pretrial motions that the parties expect to file. *See* ECF No. 134. Defendant’s Statement indicates that Defendant took this directive as a license to **refile multiple motions for summary judgment**, which includes motions pertaining to the Motor Carrier Act (“MCA”) exemption, and the never-pled affirmative defense for the retail/service establishment exemption to the FLSA. *See* ECF No. 138, PageID.6370. As the docket reflects, Defendant has demonstrated a complete disregard for the Courts Orders in this matter, beginning from the onset

¹ Plaintiff intends to file one omnibus Motion in Limine in an effort to save time and judicial resources.

of this litigation, and continuing until its untimely filing of its statement pursuant to the Court's Order. *See* ECF No. 138. Again, the Court's deadline for filing dispositive motions has long expired. In an effort to avoid this nonsense, Plaintiff respectfully requests an Order advising Defendant of the obvious: that the deadline to file motions for summary judgment has long expired and they cannot file motions additional summary judgment on the eve of trial.

Dated: August 29, 2023

Respectfully submitted,

By: /s/ Michael N. Hanna

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LOCAL RULE CERTIFICATION

I, Michael Hanna, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

/s/ Michael N. Hanna
Michael N. Hanna

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed using the CM/ECF system on August 29, 2023, which I understand will send a notice of same to all counsel of record.

/s/ Michael N. Hanna
Michael N. Hanna